Before the Restrictive Trade Practices Commission

BETWEEN

The Director of Investigation and Research

Applicant

and

Astral Films Limited - Les Films Astral Limitée
Columbia Pictures Industries, Inc.
Paramount Productions Inc. - Productions Paramount Inc.
MCA International B.V. carrying on business under the name and style of Universal Films (Canada)
Warner Bros. Distributing (Canada) Limited
United Artists Corporation
Twentieth Century-Fox Film Corporation

Respondents

Final Report to the Restrictive Trade Practices Commission on the Operation of the Undertakings Given by Six Major Motion Picture Distributors

July 31, 1984

Director of Investigation and Research
Combines Investigation Act

News Release Communiqué

Consumer and Corporate Affairs Canada
Consommation et Corporations Canada

NR-84-19

Immediate release

Combines Director withdraws motion picture case

OTTAWA, July 31, 1984 -- The Director of Investigation and Research under the Combines Investigation Act, Lawson A.W. Hunter, today announced that he has withdrawn an Application to the Restrictive Trade Practices Commission (RTPC) seeking orders for six major motion picture distributors in Canada to supply Cineplex Corporation with commercially valuable motion pictures.

The Director explained that in line with undertakings made to him last year by the distributors, they will continue to make motion pictures available to all theatres in Canada, allowing them to compete for the pictures on a picture-by-picture basis.

Mr. Hunter noted that when he received the undertakings from the distributors, he had agreed to a 12-month adjournment of a hearing before the RTPC and then to withdraw his Application before the Commission, filed in December 1982, if the distributors were complying with the undertakings.

"Over the past year, we have seen an infusion of competition in the exhibition and distribution markets," the Director remarked, adding that there has also been a

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breakdown of the old alignments between the distributors and certain exhibitors.

As well, in a final report to the Commission, the Director found that the undertakings have improved considerably the timely access to move-over, or second runs, by smaller independent exhibitors.

"There were also important improvements in access to first-run product and quite a change in the distribution pattern of motion pictures," Mr. Hunter said, adding that in light of these conclusions and partly as a result of the recent acquisition by Cineplex of Canadian Odeon Theatres Ltd., there were no longer grounds to proceed with the Application.

The Director noted, however, that there was still cause for concern regarding other practices in the industry and that these have been raised with the industry. He said he had advised both distributors and exhibitors that he will continue to monitor the undertakings and to look into any complaints received.

"I will not hesitate," he concluded, "to apply the appropriate remedies available when the circumstances warrant."

The distributors party to the undertakings are: Columbia Pictures Industries, Inc., Paramount Productions Inc., MCA International B.V. (Universal Films (Canada)), Warner Bros. Distributing (Canada) Ltd., United Artists Corporation and Twentieth Century-Fox Film Corporation.

- 30 -

Reference: Joan Meredith
(819) 997-3146

(Version française disponible)

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Chapter 1: Introduction

This matter arose from an application to the Commission under section 31.2 of the Act on December 22, 1983 concerning the inability of Cineplex Corporation to obtain supplies of commercially valuable motion pictures. The application sought orders against seven major motion picture distributors: Astral Films Limited; Columbia Pictures Industries, Inc.; Paramount Productions Inc.; Universal Films (Canada); Warner Bros. Distributing (Canada) Limited; United Artists Corporation; and Twentieth Century-Fox Film Corporation. The application as against Astral Films was subsequently withdrawn.

In June, 1983, the other Respondents made undertakings to the Director to make significant changes in their distribution practices. In light of these undertakings, to be effective July 1, 1983, the Director agreed to a 12 month adjournment of the hearing subject to his right to bring it back on 4 weeks' notice. The Commission invited the Director to report on the operation of the undertakings after six months.

In his interim report, filed in March, the Director was encouraged by the increased availability of subsequent, or moveover runs of motion pictures and in limited cases, of first runs, to exhibitors other than Famous Players Limited and Canadian Odeon Theatres Ltd. At the same time, the conclusions concerning the distribution of first runs to Famous Players and Odeon were such that if there was no significant improvement by June 30, the Director would expect to bring the application back on for a hearing.

There have been a number of changes in the circumstances since the March report. These changes are presented below along with the conclusions the Director has reached in this matter.

This report is based on information from three principal sources:

1. Schedules of first runs of motion pictures licensed by the Distributors for the period January 1, to June 30, 1984. (see Appendix 1).

2. Exhibitors: In addition to complaints and submissions made by many exhibitors, the Director and/or his representatives consulted with the major exhibitors, including independent exhibitors, and some exhibitor associations.

3. Distributors: The Director and/or his representatives also consulted with the respondent Distributors following the March report and again in July, 1984.

Chapter 2: Changes Since Interim Report

(i) Traditional Supply Arrangements

The long-standing supply arrangements alleged to have existed between the distributors and both Famous Players and Odeon were outlined at page 35 of the March report. It was alleged that these supply arrangements precluded independent exhibitors from the market for first run motion pictures and constituted a significant barrier to entry into the business of motion picture exhibition.

A comparison of the distribution patterns in the March report and in Appendix 1 of this report reveals significant changes. For four of the six distributors, the alleged traditional patterns of supply that were clearly visible in the March report have changed. These changes represent the first major disruption of the supply arrangements alleged to have existed between distributors and the two major exhibitors for many years. Further, it is the Director's understanding that while they do not appear in Appendix 1, some of the upcoming releases of the two other distributors have been awarded to exhibitors other than those traditionally supplied.

Taken together, this information shows considerable change from the traditional patterns of distribution of the six distributors.

(ii) Acquisition of First Runs by Independent Exhibitors

One of the implications of the alleged supply arrangements was that certain independent exhibitors were precluded from the market for first run motion pictures in

Canada. By the end of the December, 1983, there had been improvement in the ability of independent exhibitors to obtain first run product from one distributor, and to a lesser extent from another. Otherwise, there had been little improvement in the ability of the independent exhibitors to obtain first run product.

One result of the breakdown of the alleged supply arrangements is that over the last 6 months there has been an increase in the share of the first run product exhibited by Cineplex. In addition to the limited increases evident prior to January 1984, Appendix 2 reveals that over the past six months, independent exhibitors as a group have increased their share of the total first run product from 11.9% to 13.3%. This increase, however, is accounted for by the increase in Cineplex's share of the total product from 5.3% to 7.2%. The results for the remaining independent exhibitors are mixed, with some experiencing increases and some decreases in their share of the total product available.

(iii) Acquisition of Moveover Runs by Independent Exhibitors

In the March report it was alleged that the traditional supply arrangements affected the distribution of moveover runs with the result that independent exhibitors were ordinarily precluded from access to them until such time as Famous Players or Odeon were no longer exhibiting any runs of the motion picture in a geographic area. The March report noted the improved opportunities for exhibitors to obtain moveover runs more quickly and at a time when the motion picture continued to have commercial value. Since January, the lack of exhibitor complaints in this regard and

an analysis of the data pertaining to the licensing of each motion picture, suggests that the improvements have continued, with moveover runs continuing to be made available on a timely basis.

(iv) Day and Dating

A related aspect of the alleged supply arrangements outlined in the interim report was the absence of "day and dating" between Famous Players or Odeon and another exhibitor. In regard to first runs, it was observed in the March report that there was virtually no day and dating for first run motion pictures when runs were awarded to Famous Players. When runs were awarded to Odeon, day and dating was observed frequently for first run motion pictures distributed by one of the distributors and to some extent for motion pictures distributed by two others.

Since January, 1984, day and dating continues to be observed in the case of moveover runs and there have been a few day and dating situations between Famous Players and either Odeon or an independent exhibitor, for first run motion pictures. While these situations mark a change from the traditional pattern, they are the exception and not the rule and there is still little day and dating between Famous Players and other exhibitors.

Where runs were awarded to Odeon, day and dating since January, 1984, is observed frequently for first run motion pictures distributed by two distributors, and to some extent for motion pictures distributed by the other four. Day and dating by competing exhibitors remains common in those cases where the first runs of the motion picture are awarded to exhibitors other than Famous Players and Odeon.

(v) Acquisition of Odeon by Cineplex

On May 29, 1984, Cineplex Corporation announced an agreement to purchase Canadian Odeon Theatres Ltd. The completion of the acquisition was announced on June 29, 1984. The new entity will operate 143 indoor theatres with 383 screens and 123,919 seats, and 29 drive-ins with 48 screens and capacity for 28,396 cars.

The combined Cineplex-Odeon operation is the second largest exhibiton circuit in Canada, surpassed in size only by Famous Players with its 190 indoor and 8 outdoor theatres.

The Director examined the acquisition, as he does all major acquisitions, and concluded that the facts did not give grounds to commence an inquiry under the merger provisions of the Combines Investigation Act.

Chapter 3: Conclusions and Continuing Concerns

Based on the changes noted since the interim report, the Director concludes:

(i) At present, the alleged traditional patterns of distribution have been disrupted.

(ii) There has been a small increase in the amount of first run product awarded to Cineplex; however, the amount of first run product going to other independent exhibitors has remained virtually unchanged since the March report.

(iii) In regard to moveover runs, the improvements noted in the March report have been maintained and the gains made to date appear to be permanent.

(iv) With the exception of Famous Players, there has been an increase in day and dating among exhibitors.

In light of the conclusions noted above and the various criticisms of the undertakings and representations made by independent exhibitors, it is possible to identify a number of areas for improvement by the distributors. Some of these areas for improvement involve matters which are currently covered by the undertakings and, therefore, it is the Director's belief that the distributors will take all reasonable steps to accommodate them:

(i) Number of Runs

The distributors shall advise all eligible exhibitors of the anticipated number of runs to be licenced and should ordinarily licence that number. A pattern of licensing

a different number of runs from that anticipated as a result of bids from a certain exhibitor is inconsistent with the undertakings. Because there may be occasions when a distributor chooses to license more than the anticipated number of runs, the distributor should not refuse to license an independent exhibitor solely for the reason that it has already licensed the anticipated number.

(ii) Multi-Theatre Bid Evaluation

The competitive bidding system is based on the awarding of product on a film by film and theatre by theatre basis. The evaluation of competing bids is to be limited to those theatres which are in substantial competition with one another. A distributor shall not take into consideration the existence or non-existence of an exhibitor's bids in areas not in substantial competition. A distributor must not accept a request for exclusivity in a market for one exhibitor's circuit.

(iii) Excessive Clearances

The clearances (i.e. area within which no other theatre will be licenced to exhibit the same film) awarded to a theatre shall not extend beyond theatres which are in substantial competition with the licenced theatre. The distributor shall not accept any offer that requires an unreasonable or excessive clearance even if the offer includes higher terms or a substantial guarantee in recognition of the clearance request.

(iv) Drive-ins

It is understood that an outdoor drive-in theatre is not in substantial competition with an indoor theatre.

(v) Day and Dating

In a theatre by theatre system, it would be expected that two or more exhibitors would play first runs on a day and date basis. Acceptance by a distributor of an exhibitor's refusal to play day and date with another is inconsistent with the undertakings.

(vi) Bidding Manipulation

The bidding system must be free of manipulation practices which discriminate unfairly against parties to the process. Practices such as these are inconsistent with the undertakings:

a) The "last look", i.e. the practice of signalling to one exhibitor the offers made by other exhibitors prior to the awarding of a run.

b) Tipping off a favoured exhibitor as to the offer required to win a run.

c) Exclusion of some bidders during re-negotiations when the initial bids were rejected and exclusion of independent exhibitors from negotiations where no bids have been submitted.

(vii) Disclosing Terms of Winning Bids

The distributors should ordinarily be prepared to explain to an unsuccessful exhibitor the reasons why his offer was not accepted. Although some distributors prefer not to disclose the terms of the winning bid, the Director believes that such disclosure upon request to an unsuccessful bidder, particularly a smaller independent exhibitor, would go a long way to reducing criticisms of the bidding process.

(viii) Delays in Awarding Runs

A number of exhibitors have complained of situations where they have been given only a short time in which to make an offer for a motion picture but the distributor has taken many weeks before making a decision. Lengthy delays by a distributor arouse suspicions on the part of exhibitors. The distributor should ordinarily make a licensing decision within a reasonable period of time after the closing of bids.

In addition to the above concerns which were shared by the Director and many exhibitors, many of the independent exhibitors also raised a number of concerns about certain practices in the industry. While the Director has not concluded that these practices necessarily raise questions under the undertakings and is not making firm recommendations for resolution of the problems, he is of the view that the distributors can and should make reasonable efforts to address these concerns:

(i) Advances and Guarantees

The insistence by distributors on advances and/or guarantees has been described by exhibitors, especially the smaller exhibitors, as unfair and discriminatory. The Director recognizes that advances and guarantees can have both positive and negative effects. A requirement for an advance or guarantee with respect to a new entrant or a new theatre may be justified to allow them to establish themselves as suitable theatres to the distributors. They can be used as a means of gaining entry to the market. On the other hand, there is the concern that a larger exhibitor could use this mechanism as a predatory tactic or alternately that the distributor could abuse its position to extract higher rentals through advances or guarantees. While the Director is reluctant to discourage the availability of advances and guarantees as an entry mechanism, he recognizes that in many cases they should not otherwise be necessary and the distributors should not unreasonably demand them from exhibitors.

(ii) Unwarranted Blind Bidding

Blind bidding, by which exhibitors must bid for the licence to exhibit a motion picture before viewing, is an anathema to the independent exhibitors. While sympathetic to their concerns, the Director recognizes that a certain amount of blind bidding is a fact of life in the motion picture industry due to the long lead times in film production and the existence of peak times in screen demand (e.g. Christmas and Summer). Nonetheless, the Director views unwarranted blind bidding as contrary to the spirit of the undertakings.

Unwarranted blind bidding would include situations where the product even in a preliminary form is in fact available for screening or situations where bids are solicited at an unreasonably early stage.

(iii) Increased Rental Terms in Non-Competitive Markets

The independent exhibitors have alleged that rentals for runs in non-competitive markets have increased. Some distributors deny that this is the case. The Director cannot see what factors have arisen subsequent to the undertakings which would cause the distributors to raise the rental terms in non-competitive situations.

(iv) Co-operative Advertising

In larger markets, where there exists multiple runs and exhibitors of vastly different sizes, it is important for the success of smaller exhibitors to be able to engage in co-operative advertising with larger exhibitors and essential that they not be discriminated against in the co-operative advertising allowance they receive from the distributors. In these circumstances the effectiveness of the advertising of the motion picture is believed to be enhanced and the smaller exhibitor is able to participate in the larger, more effective advertisements.

(v) Early Release of Video Cassettes

Exhibitors in small towns or those who traditionally play the last run in the largest cities, such as Toronto, are experiencing difficulty as a result of the early release of motion pictures on video cassettes.

While this problem is not related to the undertakings per se, it does concern a distribution issue with a negative impact on independent exhibitors, particularly in small towns. The distributors should demonstrate more awareness of the problems of these exhibitors. One approach might be to make greater efforts to assure that prints are available to these exhibitors before the release of the video cassette.

(vi) Identification of Theatres in Substantial Competition

Some independent exhibitors believe it necessary to know precisely which theatres are considered to be in "substantial competition" with their own. While the Director recognizes that some flexibility in determining the distribution pattern of a particular motion picture is necessary, it should be possible for distributors to indicate generally those theatres in substantial competition for a typical motion picture.

(vii) Requiring Longer Runs

In addition to complaints of higher film rental terms, independent exhibitors have complained that the distributors are requiring commitments for longer runs in non-competitive situations. This practice may force an exhibitor to play one motion picture when he may have earned a higher return with another. The undertakings were not intended to encourage distributors to extract more favourable conditions from exhibitors nor to refuse to renegotiate contracts where they would have done so before. Both sides should make efforts to resolve such disagreements.

(viii) Cancelling Play Dates in Smaller Markets

Similarly, it is alleged that distributors frequently cancel play dates at the last moment, even after an exhibitor has purchased his advertising, because a print was held over in another market. While this problem also does not appear to be related to the undertakings, distributors should make all reasonable efforts to avoid it or to compensate an exhibitor when it occurs.

(ix) French Language Markets

Lengthy delays in making available an adequate number of runs of the French version of popular motion pictures is a concern of the Government of Québec as well as exhibitors in that Province. Distributors should make greater efforts to respond to those concerns.

Chapter 4: Implications for Further Action

In light of the facts noted above, the Director is of the opinion that there is no longer the factual basis to support the application made under section 31.2 of the Act with respect to Cineplex Corporation and he has decided to withdraw the applicaiton.

The Director is also of the opinion that the undertakings continue to be in effect and he expects each Distributor to live up to the provisions contained therein. The Director is writing to each distributor to advise them of his conclusion and to draw the continuing concerns to their attention. The text of the letter appears in Appendix 3. Although some Distributors do not agree that the undertakings continue to be binding, it is their intention to distribute motion pictures in a manner consistent with them.

It has been an objective of the Director that the undertakings operate to provide independent exhibitors with real competitive opportunities to obtain motion pictures, to facilitate expansion by existing independent exhibitors, and to reduce barriers to new entrants.

With the above in mind, the Director intends to continue monitoring the undertakings and if he should receive complaints or obtain information which would provide grounds for formal action under the Act, he will not hesitate to take it.

Appendix 1

Schedules of First Runs Licensed

The following six tables present a summary of first run licensing decisions made by each distributor for motion pictures released during the period from January 11, 1984 to June 30, 1984. The tables pertain only to English version first run motion pictures licensed in the following markets; Vancouver, Edmonton, Calgary, Winnipeg, Hamilton-Burlington, Toronto, Ottawa, Montréal, and Halifax. It is not possible to draw conclusions concerning the operation of the undertakings from these tables alone, but when compared to the tables contained in the March report they do serve to illustrate some of the changes which have taken place.

The information contained in the tables was obtained primarily from Friday editions of the following newspapers; The Vancouver Sun, the Edmonton Journal, the Calgary Herald, The Winnipeg Free Press, the Hamilton Spectator, the Toronto Star, The Ottawa Citizen, the Montréal Gazette, and The Chronicle-Herald of Halifax.

The calculation of the number of first runs licensed for each motion picture was based on exhibitor advertisements contained in the above listed newspapers. In general, all exhibitors advertising in each newspaper were included in the calculation. In Toronto those theatres located in Brampton, Milton, Oshawa, Oakville, Georgetown and Newmarket were excluded. In Montreal, the Border and Northway drive-ins were also excluded.

First runs exhibited in the theatres of Wilson Century Theatres Ltd. and 7 & 27 Drive-In Theatres Limited were classified as independent runs. It is the Director's understanding that Famous Players has a 50% interest in these theatres but that they are booked and operated by Twinex Century Theatres Corporation Ltd.

Data for Halifax after June 1, 1984 was not included as a result of reports of the sale of the Odeon theatres in the Maritimes.

For the purposes of this table, the first run was defined as being the first week of wide release in each market and included any second week tag on runs, but did not include second week moveover runs.

Schedule of First Runs Licensed
Columbia

Motion Picture (listed in order of release)	Famous Players	Odeon	Independent	Total
Against All Odds	0	25	0	25
Where the Boys Are	28	0	1	29
Moscow on the Hudson	1	17	4	22
The Last Winter	6	0	0	6
Hard Bodies	0	29	3	32
The Natural	21	4	0	25
GhostBusters	2	31	3	36
The Karate Kid	18	0	1	19
Total	76	106	12*	194
%	39.2	54.6	6.2	100

* of these 12 runs licensed to independents 1 was awarded to Twinex.

Schedule of First Runs Licensed
United Artists

Motion Picture (listed in order of release)	Famous Players	Odeon	Independent	Total
Hot Dog	32	0	0	32
Reckless	25	0	1	26
Sahara	11	1	0	12
Ice Pirates	34	1	0	35
Misunderstood	21	0	0	21
Breakin	34	1	2	37
Making the Grade	7	1	18	26
Over the Brooklyn Bridge	2	0	0	2
The Pope of Greenwich Village	21	0	0	21
Total	187	4	21*	212
%	88.2	1.9	9.9	100

* of these 21 runs licensed to independents, 2 were awarded to Twinex.

Schedule of First Runs Licensed
Paramount

Motion Picture (listed in order of release)	Famous Players	Odeon	Independent	Total
Footloose	32	0	0	32
Petes Dragon	29	0	0	29
Splash	6	6	9	21
Racing with the Moon	13	0	0	13
Friday the 13th the Final Chapter	27	0	1	28
Indiana Jones and the Temple of Doom	17	0	0	17
Star Trek III The Search for Spock	24	0	0	24
Top Secret	30	0	0	30
Total	178	6	10*	194
%	91.8	3.1	5.2	100

* of these 10 runs licensed to independents, 1 was awarded to Twinex.

Schedule of First Runs Licensed
20th Century Fox

Motion Picture (listed in order of release)	Famous Players	Odeon	Independent	Total
Reuben Reuben	5	1	1	7
Unfaithfully Yours	15	12	2	29
Blame it on Rio	6	14	14	34
The Buddy System	2	18	4	24
Romancing the Stone	20	10	0	30
The Stone Boy	2	2	1	5
Rhinestone	20	13	3	36
Bachelor Party	17	15	6	38
Total	87	85	31*	203
%	42.9	41.9	15.3	100

* of the 31 runs licensed to independents, 7 were awarded to Twinex.

Schedule of First Runs Licensed
Universal

Motion Picture (listed in order of release)	Famous Players	Odeon	Independent	Total
The Lonely Guy	0	25	9	34
Tank	0	20	15	35
Hard to Hold	0	22	11	33
Ice Man	21	2	5	28
Sixteen Candles	35	1	3	39
Firestarter	38	0	4	42
Streets of Fire	24	1	4	29
Repo Man	0	0	1	1
Conan the Destroyer	7	23	12	42
Total	125	94	64*	283
	44.2	33.2	22.6	100

* of the 64 runs licensed to independents, 5 were awarded to Twinex.

Schedule of First Runs Licensed
Warner Bros.

Motion Picture (listed in order of release)	Famous Players	Odeon	Independent	Total
Lassiter	17	9	5	31
Police Academy	26	4	3	33
Greystoke The Legend of Tarzan	16	0	0	16
Mike's Murder	1	7	1	9
Swing Shift	0	22	10	32
Purple Hearts	14	30	2	46
Finder's Keepers	0	25	11	36
Once upon a time in America	14	16	1	31
Gremlins	34	0	2	36
Cannonball Run II	0	31	16	47
Total	122	144	51*	317
	38.5	45.4	16.1	100

* of the 51 runs licensed to independents, 14 were awarded to Twinex.

Appendix 2

Schedules Comparing First Runs Licensed to Independent Exhibitors with all Exhibitors

The following tables present a comparison of the percentage of each distributors' total runs which were awarded to independent exhibitors for the two respective time periods covered by the interim and this report. They were calculated using the same data employed in Appendix 1 in this report and Appendix 3 in the March report.

Schedule Comparing First Runs Licensed to Cineplex vs. All Exhibitors

Distributors	Interim Report: Total # of runs	Interim Report: Cineplex runs #	Interim Report: Cineplex runs %	Final Report: Total # of runs	Final Report: Cineplex runs #	Final Report: Cineplex runs %
UNI	(415)	48	(11.6%)	(285)	44	(15.4)
COL	(183)	18	(9.8)	(195)	7	(3.6)
FOX	(234)	5	(2.1)	(207)	19	(9.2)
PAR	(302)	13	(4.3)	(196)	6	(3.1)
WAR	(232)	2	(.9)	(321)	18	(5.6)
U.A.	(270)	0	(0)	(213)	12	(5.6)
TOTAL	(1636)	86	(5.3)	(1417)	102	(7.2)

Schedule Comparing First Runs Licensed to All Independents Exhibitors vs. All Exhibitors

Distributors	Interim Report: Total # of runs	Interim Report: Independent runs #	Interim Report: Independent runs %	Final Report: Total # of runs	Final Report: Independent runs #	Final Report: Independent runs %
UNI	(415)	87	(21.0)	(285)	64	(22.5)
COL	(183)	29	(15.8)	(195)	12	(6.2)
FOX	(234)	15	(6.4)	(207)	31	(14.9)
PAR	(302)	26	(8.6)	(196)	10	(5.1)
WAR	(232)	25	(10.8)	(321)	51	(15.8)
U.A.	(270)	14	(5.2)	(213)	21	(9.9)
TOTAL	(1636)	196	(11.9)	(1417)	189	(13.3)

APPENDIX 3

Text of Letter to Distributors

Consommation et Corporations Canada
Consumer and Corporate Affairs Canada

Directeur des enquêtes et recherches
Director of Investigation and Research

Loi relative aux enquêtes sur les coalitions
Combines Investigation Act

Hull, Quebec

Mailing Address
Ottawa, Ontario
K1A 0C9

Dear Sir:

As you are aware by letter dated the 3rd day of April, 1984, I was asked by the Restrictive Trade Practices Commission (hereinafter referred to as the "Commission") to file with it a further report on the operation of the undertakings as of July 1, 1984. I have filed this report and enclose a copy thereof for your information. You will note from its contents that I have now observed certain changes with respect to the licensing of first-run motion pictures consistent with the undertakings. This was absent at the time of my first report to the Commission (March, 1984). I am pleased with this development and it is my expectation these changes will continue in a fashion consistent with the spirit and contents of the undertakings.

As I have already advised your representatives, it is my view that the undertakings which were given to me by you will continue in full force and effect with respect to the licensing of motion pictures. However, I am mindful that the undertakings were not meant to be, nor ought to be, interpreted as formally freezing, forever, appropriate conduct. Such conduct, of course, may well have to adapt to changing circumstances. Although certain distributors have indicated they do not consider the undertakings as continuing, I understand that all distributors intend to conduct their affairs in a manner consistent with them.

I have, of course, had continuing contacts with exhibitors throughout Canada. They have made known to me various criticisms of the undertakings and have set forth improvements which they consider might be made by the distributors in the bidding system. These criticisms and improvements are set out in detail in the enclosed report. I wish in this letter to highlight several of the improvements because I believe you will accomodate these concerns in your dealings with the exhibitors. In fact, for the most part, they are presently proscribed by the non-discrimination terms of the undertakings. They are as follows:

1. Number of Runs

The distributors shall advise all eligible exhibitors of the anticipated number of runs to be licenced and should ordinarily licence that number. A pattern of licensing a different number of runs from that anticipated as a result of bids from a certain exhibitor is inconsistent with the undertakings. Because there may be occasions when a distributor chooses to license more than the anticipated number of runs, the distributor should not refuse to license an independent exhibitor solely for the reason that it has already licensed the anticipated number.

2. Multi-Theatre Bid Evaluation

The competitive bidding system is based on the awarding of product on a film by film and theatre by theatre basis. The evaluation of competing bids is to be limited to those theatres which are in substantial competition with one another. A distributor shall not take into consideration the existence or non-existence of an exhibitor's bids in areas not in substantial competition. A distributor must not accept a request for exclusivity in a market for one exhibitor's circuit.

3. Excessive Clearances

The clearances (i.e. area within which no other theatre will be licenced to exhibit the same film) awarded to a theatre shall not extend beyond theatres which are in substantial competition with the licenced theatre. The distributor shall not accept any offer that requires an unreasonable or excessive clearance even if the offer includes higher terms or a substantial guarantee in recognition of the clearance request.

4. Drive-ins

It is understood that an outdoor drive-in theatre is not in substantial competition with an indoor theatre.

5. Day and Dating

In a theatre by theatre system, it would be expected that two or more exhibitors would play first runs on a day and date basis. Acceptance by a distributor of an exhibitor's refusal to play day and date with another is inconsistent with the undertakings.

6. Bidding Manipulation

The bidding system must be free of manipulation practices which discriminate unfairly against parties to the process. Practices such as these are inconsistent with the undertakings:

a) The "last look", i.e. the practice of signalling to one exhibitor the offers made by other exhibitors prior to the awarding of a run.

b) Tipping a favoured exhibitor as to the offer required to win a run.

c) Exclusion of some bidders during re-negotiations when the initial bids were rejected and exclusion of independent exhibitors from negotiations where no bids have been submitted.

7. Disclosing Terms of Winning Bids

The distributors should ordinarily be prepared to explain to an unsuccessful exhibitor the reasons why his offer was not accepted. Although some distributors prefer not to disclose the terms of the winning bid, the Director believes that such disclosure upon request to an unsuccessful bidder, particularly a smaller independent exhibitor, would go a long way to reducing criticisms of the bidding process.

8. Delays in Awarding Runs

A number of exhibitors have complained of situations where they have been given only a short time in which to make an offer for a motion picture but the distributor has taken many weeks before making a decision. Lengthy delays by a distributor arouse suspicions on the part of

exhibitors. The distributor should ordinarily make a licensing decision within a reasonable period of time after the closing of bids.

In addition, there are a number of practices which fall outside the undertakings but are of great concern to the exhibitors. These matters are discussed in greater detail in the report with the intention that the distributors will take steps to address them:

1. Advances and Guarantees

2. Unwarranted Blind Bidding

3. Increased Rental Terms in Non-Competitive Markets

4. Co-operative Advertising

5. Early Release of Video cassettes

6. Identification of Theatres in Substantial Competition

7. Requiring Longer Runs

8. Cancelling Play Dates in Smaller Markets

9. French Language Markets

In summary, it is my expectation that all of the distributors will continue to conduct themselves in a manner consistent with the undertakings and will satisfactorily address the concerns expressed in this letter and the enclosed report. I, for my part, will continue to monitor the conduct of the distributors with regard to the provisions of the undertakings and will look into complaints received, including, if necessary, by relying on the provisions of paragraph 7. I will not hesitate to apply the appropriate remedies available to me when the circumstances warrant.

Finally, in light of the substantial changes in the circumstances, including the acquisition by Cineplex Corporation of Canadian Odeon Theatres Ltd., it is my position that there is no longer the factual basis to

support the section 31.2 application which I commenced with respect to Cineplex Corporation. Therefore, I have withdrawn the application by notice to the Commission, a copy of which is enclosed.

I look forward to your continued co-operation.

Yours very truly,

Lawson A.W. Hunter
Director